



\$5

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Peter Bennett Duff WHYTE

Serial No.: 09/702,037

Group No.:

Filed: October 27, 2000

Examiner:

For: FOOD COMPOSITION AND METHOD OF USING SAME

Attorney Docket No.: U 013032-6

Assistant Commissioner for Patents  
Washington, D.C. 20231

**RECEIVED**

AUG 07 2001

OFFICE OF PETITIONS

**PETITION UNDER 37 CFR 1.47 TO ACCEPT APPLICATION**  
**ON PROPRIETARY INTEREST**

This is a Petition Under 37 CFR 1.47 to Accept  
Application on Proprietary Interest.

The fee (\$130.00) for the Petition is attached with a  
Completion of Filing Requirements.

07/09/2001 EEKUBAY1 00000122 09702037

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130.00 0P

Respectfully submitted,

  
William R. Evans  
c/o Ladas & Parry  
26 West 61<sup>st</sup> Street  
New York, New York  
Reg. No. 25858  
Tel. No. (212) 708-1930

**CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8a)**

I hereby certify that this correspondence is, on the date shown below, being:

**MAILING**

☒ deposited with the United States Postal Service  
with sufficient postage as first class mail in an envelope  
addressed to the Commissioner of Patents and  
Trademarks, Washington, D.C. 20231

**FACSIMILE**

☐ transmitted by facsimile to the Patent and  
Trademark Office

  
Signature

Date: June 27, 2001

WILLIAM R. EVANS

(type or print name of person certifying)

Docket No. U 013032-6



*DAG*  
03CO  
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: P.B.D. Whyte  
For: Food Composition and Method of Using Same

the specification of which:

(check and complete (a), (b), or (c))

- (a) ☐ is attached hereto.  
(b) ☒ was filed on October 27, 2000, as Application Serial No. 09/702,037 and was amended on \_\_\_\_\_ (if applicable).  
(c) ☐ was described and claimed in International Application No. \_\_\_\_\_, filed on \_\_\_\_\_ and as amended on \_\_\_\_\_ (if any).

STATEMENT OF FACTS IN SUPPORT OF FILING  
ON BEHALF OF NONSIGNING INVENTOR (37 CFR 1.47)

NOTE: This statement as to the pertinent facts concerning the refusal of the nonsigning inventor to join in the application or where the nonsigning inventor cannot be found or reached must accompany the declaration signed on behalf of the nonsigning inventor by a joint inventor or by a legal representative who shows a proprietary interest. Where the entity with a proprietary interest executes the declaration on behalf of the nonsigning inventor there must also be a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage. 37 CFR 1.47(a) and (b).

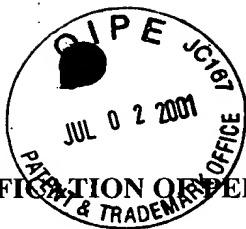
This statement is made as to the exact facts that are relied upon to establish the diligent effort made to secure the execution of the declaration by the nonsigning inventor for the above identified patent application before deposit thereof in the Patent and Trademark Office.

(check next item, if applicable)

- ☒ Because signing on behalf of the nonsigning inventor is by a person or entity showing a sufficient proprietary interest, this statement also recites facts as to why this action was necessary to preserve the rights of the parties or to prevent irreparable damage.

This statement is being made by the available person having first-hand knowledge of the facts recited therein.

NOTE: The statement "must be signed, where at all possible, by a person having first-hand knowledge of the facts recited therein." MPEP § 409.03(d). If different persons have first-hand knowledge of different facts, then a declaration from each such person as to those facts he or she knows should be submitted separately.



**IDENTIFICATION OF PERSON MAKING THIS STATEMENT OF FACTS**

MR ANTONY SCAMMELL

Name of person making statement

41 MARLBOROUGH STREET, COLLEGE PARK, SOUTH AUSTRALIA, 5069, AUSTRALIA

Address of person making statement



**EFFORTS DURING CONVENTION YEAR TO PREPARE APPLICATION AND  
OBTAIN INVENTOR'S SIGNATURE**

*NOTE: In cases where priority is to be claimed, the reason(s) for any decision to delay the preparation for filing in the U.S. and obtaining the inventor's signature until the end of the convention year, such as (a) time to decide on commercial value, or (b) waiting to determine what art would be cited in corresponding prior filing, etc. should be indicated. MPEP § 409.03(d).*

The provisional application filed in support of USSN 09/702,037 was filed on 30 April 1998 and accorded the number PP3271. A formal assignment which assigns the invention described in PP3271 was signed by the non-signing inventor (NSI) Mr Peter Bennett Duff Whyte on 30 April 1999. This assignment was signed by the NSI and myself (Antony Scammell). A copy of the assignment is enclosed. No difficulties were experienced with obtaining the signature of the NSI at this stage. A PCT application was prepared and filed on 30 April 1999. A subsequent National Phase application was filed in the United States as USSN 09/702,037.

The NSI (as for all NorthField staff) was employed (employment contract attached) under conditions stipulating that:- "You will be expected to adhere to Company policy and procedures which are available for inspection" and also stipulating a Confidentiality clause "This offer of employment is made on the basis that you will not reveal secret and confidential Company information to outside parties, and that you will enter into the Company's standard secrecy agreement with regard to confidential information if asked". This was asked and the NSI entered into the Company's employee confidentiality agreement. The employee confidentiality agreement states:- "The parties acknowledge that this agreement does not transfer any interest in any property, including but not limited to, intellectual property rights". Now produced and shown to me marked "AS-1" is a copy of the employment contract. Now produced and shown to me marked "AS-2" is a copy of the employee confidentiality agreement.

The company's human resource policy No 1, states that:- "Trade secrets, strategic marketing plans and activities, specialised production techniques, research and development activities and so forth are all valuable property of the Company and their confidentiality is essential to the competitive position of NorthField and other Nutricia companies and clients." Now produced and shown to me marked "AS-3" is a copy of the standard operating procedure. As a senior manager of the company the NSI was aware of and expected to implement company policy. It is clear to all staff that intellectual property developed by employees belongs to the company. This is highlighted by the NSI's assignment of rights to the priority document for this application.

In addition the job role of the NSI at the time when the patent data was developed explicitly stated that the NSI's role was primarily to do with "Project initiation and management" which incorporates development of Intellectual Property as an expected part of the job. Now produced and shown to me marked "AS-4" is a copy of the NSI's job role statement.

*(use Supplemental Page(s), if necessary)*

## LAST KNOWN ADDRESS OF THE NONSIGNING INVENTOR

*NOTE: The last known address of the nonsigning inventor must be stated so that the PTO can forward the notice of filing of the application to the nonsigning inventor at said address. (37 CFR 1.47).*

PETER BENNETT DUFF WHYTE

Full name of nonsigning inventor

9 AUSTRALIA II AVENUE, NORTH HAVEN, SOUTH AUSTRALIA 5108, AUSTRALIA

Last known address of nonsigning inventor

*NOTE: Ordinarily, the last known address will be the last known address of the nonsigning inventor, but other addresses at which the nonsigning inventor may be reached should also be given in the space below. MPEP § 409.03(e).*

## DETAILS OF EFFORTS TO REACH NONSIGNING INVENTOR

*NOTE: Complete either these facts or the facts as to REFUSAL OF NONSIGNING INVENTOR TO SIGN APPLICATION PAPERS.*

*NOTE: In addition to a recitation of these efforts, which must have been made before the application was deposited in PTO, copies of documentary evidence such as letters, telegrams, responses, etc. that support a finding that a nonsigning inventor could not be found or reached should, if available, be made part of the statement. MPEP § 409.03(d).*

The priority document or provisional application was filed in Australia on 30 April 1998. Formal assignment of rights to the invention was given to Northfield Laboratories (the Company) by the Nonsigning inventor (NSI) by completion of an assignment document signed on 30 April 1999. During the year following the filing of the priority document, the PCT application was prepared and filed by 30 April 1999. A National Phase application for the U.S.A. was made on 27 October 2000 (USPN 09/702,037).

Between the filing of the PCT application (30 April 1999) and national phase filing (27 October 2000) the NSI was made redundant by the company. Now produced and shown to me marked "AS-5" is a copy of the redundancy notice letter (dated 31 December 1999). The notice indicates an effective termination date of March 31<sup>st</sup> 1999.

The national phase assignment documents including declaration (the documents) were provided in person to the NSI by Mr Raymonde Peeters, Plant Manager, NorthField Laboratories at the NSI's new place of employ, and in the presence of Mr Gil Polomka, Plant Assistant, NorthField Laboratories Pty Ltd on Monday November 20<sup>th</sup>, 2000 upon filing at the United States Patent and Trade Marks Office (USPTO) for his signature. The NSI said he would not sign and requested the documents be taken back to the company by Mr Peeters. Mr Peeters did not take back the documents, asking the NSI read the documents and call Mr Scammell (Now produced and shown to me marked "AS-6" is a copy of a diary note from Mr Peeters). The NSI subsequently returned the documents by mail to Mr Scammell, and they arrived at NorthField on November 22<sup>nd</sup>.

Upon receipt of the documents on November 22<sup>nd</sup>, I called the NSI by phone at his place of employment to determine the reasons why he had not signed. The NSI stated that "the gloves were off" and that he would not sign the documents. When asked why, he stated that he felt that he had been treated badly when and especially since being made redundant by the company. This conversation confirmed the NSI's refusal to sign as expressed two days before to Mr Peeters. I drafted a letter of apology regarding these issues on that day which was not sent but is on file.

Due to the NSI's adamant position, no further contact was made regarding the application, given that the NSI had already assigned to the Company all rights to the invention in the Assignment document dated 30 April 1999 when in its employ, and that patent attorney advice was that the original assignment should be sufficient to continue with the National applications.

*(use Supplemental Page(s), if necessary)*

## DETAILS OF REFUSAL OF NONSIGNING INVENTOR TO SIGN APPLICATION PAPERS

*NOTE: Complete either these facts or the facts as to DETAILS OF EFFORTS TO REACH NONSIGNING INVENTOR.*

*NOTE: The circumstances of this refusal must be specified by the person to whom the refusal was made and, before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings and declaration) to the nonsigning inventor for signature. The time and place of an oral refusal should be stated, or a copy of the written refusal should be attached.*

*If it is the conduct as a whole of the nonsigning inventor that is the refusal, then all the facts upon which this conclusion is based should be stated and a copy of any documentary evidence supporting these facts should be attached.*

*Whenever the nonsigning inventor gives a reason for refusing to sign the application papers, that reason should be stated. MPEP § 409.03(d).*

The reason for the refusal to sign by the NSI is related to the fact that the NSI was made redundant along with several other Northfield staff at the end of 1999 for reasons explained in the attached redundancy notice (Exhibit "AS-5"). At that time it was stated that there was potential for a continuing consultancy arrangement and a draft agreement was drawn up and discussed. Now produced and shown to me marked "AS-7" is a copy of the draft consultancy agreement. The agreement was not initially acceptable to the NSI due to the consultancy rate being too low and due to the possibility that a new employer may not wish to accommodate a consulting arrangement. The terms were discussed between the NSI and myself in late December. However, after having gained full time employment elsewhere, the NSI advised by phone in April 2000 that the agreement would now be acceptable. The company did not proceed to enter into the consultancy agreement at that time due to the fact that the consultancy was no longer felt to be required, and the Company funds were extremely limited.

*(use Supplemental Page(s), if necessary)*

## PROOF OF NEED TO PREVENT IRREPARABLE DAMAGE OR PRESERVE THE RIGHTS OF THE PARTIES

**NOTE:** *This proof must be presented where the declaration is signed by a person with sufficient proprietary interest for the nonsigning inventor (37 CFR 1.47(b)), but is not a requirement when the person signing for the nonsigning inventor is a joint inventor. (37 CFR 1.47(a)).*

*A diligent effort to prepare the application and obtain the inventor's signature thereon must be made, even if the application is being filed to avoid a bar or to claim priority. MPEP § 409.03(g).*

*Irreparable damage may be established by showing that a filing date is necessary to (1) avoid a statutory bar that should identify the act of publication believed to constitute the bar or (2) make a claim for priority, which should identify the prior application(s) involved.*

*Preservation of the rights of the parties may be demonstrated by a showing that the nonsigning inventor may reasonably be expected to enter into competition with the person having a proprietary interest and signing on behalf of the nonsigning inventor or that a firm plan for commercialization of the subject matter of the application has been adopted. MPEP § 409.03(g).*

The NSI has formally assigned his rights to the invention (priority document PP3271) to the Company. The Company is now in a position that unless it can proceed with the application, it will suffer irreparable damage from the loss of its claim to intellectual property which it rightfully owns. The NSI has no rights to the IP by assignment and therefore is not to suffer any loss by the Company not being allowed to continue with the Application. The NSI also conceived the invention under the employ of the company. A copy of the employment contract is attached (Exhibit "AS-1"). Although it was a team effort – the patent was actually written by myself, while the NSI was instrumental in initiating the method of use being claimed.

The Company has specific products in the USA dependent upon the Intellectual Property in this patent. To date NorthField has entered into license agreements with:-

- a) the largest producer of colostrum powder products in the USA (LaBelle Inc) which has agreed to exclusively supply NorthField and its marketing licensees with colostrum powder products using the intellectual property, and
- b) General Nutrition Corporation (GNC Inc), the largest retailer of nutritional supplements in the USA which has exclusive rights to market certain applications of the intellectual property in the USA and elsewhere and has launched and continues to market the following products in the USA and elsewhere. Now produced and shown to me marked "AS-8" are descriptions of marketing material from GNC and Rexall websites:-
  - 1. Intact concentrated colostrum protein powder
  - 2. Immunizen capsules containing intact colostrumOther products are being developed.

We have relied on disclosing the patent data to enter into both agreements. Licensees are displaying patent (and related trademark) information on their packaging.

The NSI is attempting to disadvantage the Company by making the process to gain the necessary IP that does not belong to him a difficult process, in order to satisfy his disappointment regarding the consultancy agreement. Prior to this fall out, the NSI was clearly co-operative to signing the appropriate documents such as the assignment document to advance the application.

*(if this proof is not needed and not being presented,  
then draw a line through this page of the form.)  
(use Supplemental Page(s), if necessary)*



Date:

25<sup>th</sup> June 2001



Signature of person making statement

[ ] Plus \_\_\_\_\_ Added Page(s)

before me:



GREG J BARTLETT  
45 GRENFELL STREET, ADELAIDE  
A PERSON REGISTERED AS A  
PATENT ATTORNEY UNDER  
CHAPTER 30 OF THE PATENTS  
ACT 1990 OF COMMONWEALTH  
OF AUSTRALIA

25 June



**ADDED PAGE TO COMBINED DECLARATION  
AND POWER OF ATTORNEY FOR DIVISIONAL, CONTINUATION  
OR C-I-P APPLICATION**

*(complete this part only if this is a divisional, continuation or C-I-P application)*

**CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S)  
UNDER 35 U.S.C. § 120**

I hereby claim the benefit, under Title 35, United States Code, § 120, of any United States application(s) or PCT international application(s) designating the United States of America that is/are listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in that/those prior application(s) in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information

☒ that is material to patentability as defined in 37, Code of Federal Regulations, § 1.56

*(also check the following item, if desired)*

☐ and that is material to the examination of this application, namely, information where there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue as a patent,

that occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application. (37 CFR 1.63(e)).

*(also check the following item, if desired)*

☐ In compliance with this duty, there is attached an information disclosure statement, in accordance with 37 C.F.R. 1.98.

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**PRIOR U.S. APPLICATIONS OR PCT INTERNATIONAL APPLICATIONS  
DESIGNATING THE U.S. FOR BENEFIT UNDER 35 USC § 120:**

U.S. APPLICATIONS

Status (*check one*)

U.S. APPLICATIONS	U.S. FILING DATE	Patented	Pending	Abandoned
1.				
2.				
3.				
PCT APPLICATION DESIGNATING THE U.S.				
PCT APPLICATION NO.	PCT FILING DATE	U.S. APPLICATION NOS. ASSIGNED (If any)		
4. AU99/00317	30 April 1999			
5.				
6.				
7.				
8.				

(Added Page to Combined Declaration and Power of Attorney for Signature by Person with Sufficient Proprietary Interest on  
Behalf of Nonsigning Inventor(s) Who Refuse(s) to Sign or Cannot Be Reached—page 10 of 7) 1-5

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ms



35 USC § 119 PRIORITY CLAIM, IF ANY,  
FOR ABOVE LISTED U.S./PCT APPLICATIONS

ABOVE APPLICATION NO.	DETAILS OF APPLICATION FROM WHICH PRIORITY CLAIMED UNDER 35 USC § 119		
<i>please indicate appropriate PCT application no.</i>	Country and Application No.	Date of filing (day, month, year)	Date of issue (day, month, year)
1.			
2.			
3.			
4.	AU PP3271	30 April 1998	5 May 1998
5.			
6.			
7.			
8.			

(Added Page to Combined Declaration and Power of Attorney for Signature by Person with Sufficient Proprietary Interest on  
Behalf of Nonsigning Inventor(s) Who Refuse(s) to Sign or Cannot Be Reached—page 11 of 7) 1-5

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AW



Practitioner's Docket No. U 013032-6

**ADDED PAGES TO COMBINED DECLARATION  
AND POWER OF ATTORNEY FOR SIGNATURE BY PERSON  
WITH SUFFICIENT PROPRIETARY INTEREST ON BEHALF OF NONSIGNING  
INVENTOR(S) WHO REFUSE(S) TO SIGN OR CANNOT BE REACHED  
(37 CFR 1.47(b))**

I, **ANTONY SCAMMELL**,

*(type or print name of person (entity) with sufficient proprietary interest or authorized to act on behalf of such person (entity))*

hereby declare that:

I. I am a citizen of AUSTRALIA,

residing at 41 MARLBOROUGH STREET, COLLEGE PARK, SOUTH AUSTRALIA, 5069, AUSTRALIA

II. I

check ☐ am a person with sufficient proprietary interest.

one ☒ am authorized by the following person or juristic entity with sufficient proprietary interest,

*(complete the following information, if applicable):*

**NORTHFIELD LABORATORIES PTY LTD**

Name of assignee or entity having sufficient proprietary interest

**180 Fosters Road, Oakden, South Australia 5086, Australia**

Address of assignee or entity having sufficient proprietary interest

**GENERAL MANAGER**

Title of person executing this declaration and authorized to sign on behalf of assignee or entity having sufficient proprietary interest

III. By virtue of this proprietary interest, I sign this declaration on behalf of, and as agent for:

Full name of (first, second, etc.) **Peter Bennett Duff WHYTE**

nonsigning inventor

who

☒ refuses to sign.

☐ cannot be found or reached.

**NOTE:** *The name of the nonsigning inventor(s) should preferably also be inserted at the appropriate prior space in the declaration, adding the words "nonsigning inventor-completed on added page."*

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ms



Australia

Country of Citizenship of nonsigning inventor

9A Australia II Avenue

Last known address of nonsigning inventor

North Haven, South Australia 5018, Australia

*NOTE: Ordinarily, the last known address will be the last known residence of the nonsigning inventor(s). Other addresses at which the nonsigning inventor(s) may be reached should also be given (and these can best be given in the Statement of Facts in Support of Filing on Behalf of Nonsigning Inventor). MPEP § 409.03(e)*

IV. Upon information and belief, I aver those facts that the inventor is required to state. 37 CFR 1.64(b).

V. Accompanying this declaration is:

- (1) A STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING INVENTOR,
- (2) A STATEMENT ESTABLISHING PROPRIETARY INTEREST BY PERSON SIGNING ON BEHALF OF NONSIGNING INVENTOR ,

to establish the proof of pertinent facts, and to show that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, and

*NOTE: Proof that such action is necessary to preserve the right of the parties or prevent irreparable damage may be made in either one of the above declarations by person having first-hand knowledge.*

- (3) THE PETITION FEE OF \$130.00 (37 C.F.R. 1.17(i)).

Date: 25<sup>th</sup> June 2001

*Ms. Scamman*  
Signature of person with sufficient proprietary interest or authorized to act on behalf of such person or entity

Before me: *Greg J. Bartlett*  
GREG J. BARTLETT  
45 GRENFELL STREET, ADELAIDE  
A PERSON REGISTERED AS A  
PATENT ATTORNEY UNDER  
CHAPTER 30 OF THE PATENTS  
ACT 1990 OF COMMONWEALTH  
OF AUSTRALIA

Practitioner's Office

U 013032-6

PATENT



Optional Customer No. Bar Code

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PATENT TRADEMARK OFFICE

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**COMBINED DECLARATION AND POWER OF ATTORNEY**

(ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL,  
CONTINUATION, OR C-I-P)

---

As a below named inventor, I hereby declare that:

**TYPE OF DECLARATION**

This declaration is of the following type:

*(check one applicable item below)*

- ☐ original.  
☐ design.

**NOTE:** With the exception of a supplemental oath or declaration submitted in a reissue, a supplemental oath or declaration is not treated as an amendment under 37 CFR 1.312 (Amendments after allowance). M.P.E.P. Section 714.16, 7<sup>th</sup> Ed.

- ☐ supplemental.

**NOTE:** If the declaration is for an International Application being filed as a divisional, continuation or continuation-in-part application, do not check next item; check appropriate one of last three items.

- ☐ national stage of PCT.

**NOTE:** If one of the following 3 items apply, then complete and also attach ADDED PAGES FOR DIVISIONAL, CONTINUATION OR C-I-P.

**NOTE:** See 37 C.F.R. Section 1.63(d) (continued prosecution application) for use of a prior nonprovisional application declaration in the continuation or divisional application being filed on behalf of the same or fewer of the inventors named in the prior application.

- ☐ divisional.  
☒ continuation.

**NOTE:** Where an application discloses and claims subject matter not disclosed in the prior application, or a continuation or divisional application names an inventor not named in the prior application, a continuation-in-part application must be filed under 37 C.F.R. Section 1.53(b) (application filing requirements-nonprovisional application).

- ☐ continuation-in-part (C-I-P).

25 Aug



## INVENTORSHIP IDENTIFICATION

**WARNING:** *If the inventors are each not the inventors of all the claims, an explanation of the facts, including the ownership of all the claims at the time the last claimed invention was made, should be submitted.*

My residence, post office address and citizenship are as stated below, next to my name. I believe that I am the original, first and sole inventor (*if only one name is listed below*) or an original, first and joint inventor (*if plural names are listed below*) of the subject matter that is claimed, and for which a patent is sought on the invention entitled:

### TITLE OF INVENTION

Food Composition and Method of Using Same

### SPECIFICATION IDENTIFICATION

The specification of which:

(complete (a), (b), or (c))

(a) ☐ is attached hereto.

**NOTE:** *"The following combinations of information supplied in an oath or declaration filed on the application filing date with a specification are acceptable as minimums for identifying a specification and compliance with any one of the items below will be accepted as complying with the identification requirement of 37 C.F.R. Section 1.63:*

*"(1) name of inventor(s), and reference to an attached specification which is both attached to the oath or declaration at the time of execution and submitted with the oath or declaration on filing;*

*"(2) name of inventor(s), and attorney docket number which was on the specification as filed; or*

*"(3) name of inventor(s), and title which was on the specification as filed."*

*Notice of July 13, 1995 (1177 O.G. 60).*

(b) ☒ was filed on October 27, 2000 ☒ as Application No. 09/702,037  
☐ and was amended on \_\_\_\_\_ (if applicable).

**NOTE:** *Amendments filed after the original papers are deposited with the PTO that contain new matter are not accorded a filing date by being referred to in the declaration. Accordingly, the amendments involved are those filed with the application papers or, in the case of a supplemental declaration, are those amendments claiming matter not encompassed in the original statement of invention or claims. See 37 C.F.R. Section 1.67.*

**NOTE:** *"The following combinations of information supplied in an oath or declaration filed after the filing date are acceptable as minimums for identifying a specification and compliance with any one of the items below will be accepted as complying with the identification requirement of 37 C.F.R. Section 1.63:*

(A) *application number (consisting of the series code and the serial number, e.g., 08/123,456);*

(B) *serial number and filing date;*

(C) *attorney docket number which was on the specification as filed;*

(D) *title which was on the specification as filed and reference to an attached specification which is both attached to the oath or declaration at the time of execution and submitted with the oath or declaration; or*

(E) *title which was on the specification as filed and accompanied by a cover letter accurately identifying the application for which it was intended by either the application number (consisting of the series code and the serial number, e.g., 08/123,456), or serial number and filing date. Absent any statement(s) to the contrary, it will be presumed that the application filed in the PTO is the application which the inventor(s) executed by signing the oath or declaration.*

*M.P.E.P. Section 601.01(a), 7th ed.*



- (c) ☐ was described and claimed in PCT International Application No. \_\_\_\_\_ filed on \_\_\_\_\_ and as amended under PCT Article 19 on \_\_\_\_\_ (if any).

**SUPPLEMENTAL DECLARATION (37 C.F.R. Section 1.67(b))**

*(complete the following where a supplemental declaration is being submitted)*

☐ I hereby declare that the subject matter of the

☐ attached amendment

☐ amendment filed on \_\_\_\_\_.

was part of my/our invention and was invented before the filing date of the original application, above identified, for such invention.

**ACKNOWLEDGMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR**

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information, which is material to patentability as defined in 37, Code of Federal Regulations, Section 1.56,

*(also check the following items, if desired)*

☐ and which is material to the examination of this application, namely, information where there is a substantial likelihood that a reasonable Examiner would consider it important in deciding whether to allow the application to issue as a patent, and

☐ in compliance with this duty, there is attached an information disclosure statement, in accordance with 37 C.F.R. Section 1.98.

**PRIORITY CLAIM (35 U.S.C. Section 119(a)-(d))**

*NOTE: "The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath or declaration as required by Section 1.63. The claim for priority and the certified copy of the foreign application specified in 35 U.S.C. Section 119(b) must be filed in the case of an interference (Section 1.630), when necessary to overcome the date of a reference relied upon by the examiner, when specifically required by the examiner, and in all other situations, before the patent is granted. If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, it must be accompanied by a petition requesting entry and by the fee set forth in Section 1.17(i). If the certified copy is not in the English language, a translation need not be filed except in the case of interference; or when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner, in which event an English language translation must be filed together with a statement that the translation of the certified copy is accurate." 37 C.F.R. Section 1.55(a).*

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119(a)-(d) of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed.

*(complete (d) or (e))*

- (d) ☐ no such applications have been filed.  
 (e) ☐ such applications have been filed as follows.

*NOTE: Where item (c) is entered above and the International Application which designated the U.S. itself claimed priority check item (e), enter the details below and make the priority claim.*

**PRIOR FOREIGN/PCT APPLICATION(S) FILED WITHIN 12 MONTHS  
 (6 MONTHS FOR DESIGN) PRIOR TO THIS APPLICATION  
 AND ANY PRIORITY CLAIMS UNDER 35 U.S.C. SECTION 119(a)-(d)**

COUNTRY (OR INDICATE IF PCT)	APPLICATION NUMBER	DATE OF FILING DAY, MONTH, YEAR	PRIORITY CLAIMED UNDER 35 USC 119
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

**CLAIM FOR BENEFIT OF PRIOR U.S. PROVISIONAL APPLICATION(S)  
 (35 U.S.C. Section 119(e))**

I hereby claim the benefit under Title 35, United States Code, Section 119(e) of any United States provisional application(s) listed below:

**PROVISIONAL APPLICATION NUMBER**

/ \_\_\_\_\_  
 / \_\_\_\_\_  
 / \_\_\_\_\_

**FILING DATE**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S)  
 UNDER 35 U.S.C. SECTION 120**

- ☒ The claim for the benefit of any such applications are set forth in the attached ADDED PAGES TO COMBINED DECLARATION AND POWER OF ATTORNEY FOR DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART (C-I-P) APPLICATION.

  
ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS  
(6 MONTHS FOR DESIGN APPLICATIONS), PRIOR TO THIS U.S. APPLICATION

NOTE: If the application filed more than 12 months from the filing date of this application is a PCT filing forming the basis for this application entering the United States as (1) the national stage, or (2) a continuation, divisional, or continuation-in-part, then also complete ADDED PAGES TO COMBINED DECLARATION AND POWER OF ATTORNEY FOR DIVISIONAL, CONTINUATION OR C-I-P APPLICATION for benefit of the prior U.S. or PCT application(s) under 35 U.S.C. Section 120.

### POWER OF ATTORNEY

I hereby appoint the following practitioner(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

(list name and registration number)

JOSEPH H. HANDELMAN, 26179

RICHARD P. BERG, 28145

JOHN RICHARDS, 31053

JULIAN H. COHEN, 20302

RICHARD J. STREIT, 25765

WILLIAM R. EVANS 25858

PETER D. GALLOWAY, 27885

JANET I. CORD, 33778

IAN C. BAILLIE, 24090

CLIFFORD J. MASS, 30086

THOMAS F. PETERSON, 24790

CYNTHIA R. MILLER, 34678

(Check the following item, if applicable)

- ☐ I hereby appoint the practitioner(s) associated with the Customer Number provided below to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.
- ☐ Attached, as part of this declaration and power of attorney, is the authorization of the above-named practitioner(s) to accept and follow instructions from my representative(s).

NOTE: "Special care should be taken in continuation or divisional applications to ensure that any change of correspondence address in a prior application is reflected in the continuation or divisional application. For example, where a copy of the oath or declaration from the prior application is submitted for a continuation or divisional application filed under 37 CFR 1.53(b) and the copy of the oath or declaration from the prior application designates an old correspondence address, the Office may not recognize, in the continuation or divisional application, the change of correspondence address made during the prosecution of the prior application. Applicant is required to identify the change of correspondence address in the continuation or divisional application to ensure that communications from the Office are mailed to the current correspondence address. 37 CFR 1.63(d)(4)." Section 601.03, M.P.E.P., 7th Ed



---

SEND CORRESPONDENCE TO

**Ladas & Parry**  
**26 West 61<sup>st</sup> Street**  
**New York, N.Y. 10023**

DIRECT TELEPHONE CALLS TO:  
*(Name and telephone number)*

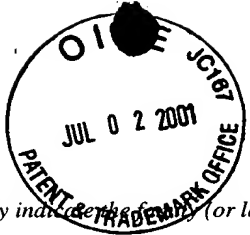
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*(complete the following if applicable)*

Since this filing is a [ ] continuation [ ] divisional there is attached hereto a Change of Correspondence Address so that there will be no question as to where the PTO should direct all correspondence.

#### DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



## SIGNATURE(S)

NOTE: Carefully indicate the first (or last) name, as it should appear on the filing receipt and all other document.

NOTE: Each inventor must be identified by full name, including the family name, and at least one given name without abbreviation together with any other given name or initial, and by his/her residence, post office address and country of citizenship. 37 C.F.R. Section 1.63(a)(3).

NOTE: Inventors may execute separate declarations/oaths provided each declaration/oath sets forth all the inventors. Section 1.63(a)(3) requires that a declaration/oath, inter alia, identify each inventor and prohibits the execution of separate declarations/oaths which each sets forth only the name of the executing inventor. 62 Fed. Reg. 53,131, 53,142, October 10, 1997,

### Full name of sole or first inventor

Peter  
(Given Name)

Bennett Duff  
(Middle Initial or Name)

WHYTE  
(Family (Or Last Name))

Inventor's signature Peter Bennett Duff Whyte by Antony Scammell

Date 25<sup>th</sup> June 2007 Country of Citizenship Australia

Residence North Haven, Australia

Post Office Address 9A Australia II Avenue, North Haven, South Australia 5018  
Australia



### Full name of second joint inventor, if any

(Given Name)

(Middle Initial or Name)

Family (Or Last Name)

Inventor's signature \_\_\_\_\_

Date \_\_\_\_\_ Country of Citizenship \_\_\_\_\_

Residence \_\_\_\_\_

Post Office Address \_\_\_\_\_



### Full name of third joint inventor, if any

(Given Name)

(Middle Initial or Name)

Family (Or Last Name)

Inventor's signature \_\_\_\_\_

Date \_\_\_\_\_ Country of Citizenship \_\_\_\_\_

Residence \_\_\_\_\_

Post Office Address \_\_\_\_\_

25 Aug

(check proper box(es) for any of the following added page(s)  
that form a part of this declaration)

[ ] **Signature** for fourth and subsequent joint inventors. *Number of pages added* \_\_\_\_\_

\* \* \*

[ ] **Signature** by administrator(trix), executor(trix) or legal representative for deceased or incapacitated inventor. *Number of pages added* \_\_\_\_\_

\* \* \*

[X] **Signature** for inventor who refuses to sign or cannot be reached by person authorized under 37 C.F.R. Section 1.47. *Number of pages added* 2\_\_\_\_\_

\* \* \*

[ ] Added page for **signature** by one joint inventor on behalf of deceased inventor(s) where legal representative cannot be appointed in time. (37 C.F.R. Section 1.47)

\* \* \*

[X] Added pages to combined declaration and power of attorney for divisional, continuation, or continuation-in-part (C-I-P) application.

[X] *Number of pages added* 3\_\_\_\_\_

\* \* \*

[ ] Authorization of practitioner(s) to accept and follow instructions from representative.

(If no further pages form a part of this Declaration,  
then end this Declaration with this page and check the following item)

[ ] This declaration ends with this page.



Practitioner's Docket No. U 013032-6

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: P.B.D. Whyte  
For: Food Composition and Method of Using Same

the specification of which:

*(check and complete (a), (b), or (c))*

- (a) ☐ is attached hereto.  
(b) ☒ was filed on October 27, 2000, as Application No. 09 / 702,037 and was amended on \_\_\_\_\_ *(if applicable)*.  
(c) ☐ was described and claimed in International Application No. \_\_\_\_\_, filed on \_\_\_\_\_ and as amended on \_\_\_\_\_ *(if any)*.

**STATEMENT ESTABLISHING PROPRIETARY INTEREST BY PERSON  
SIGNING ON BEHALF OF NONSIGNING INVENTOR**

I. I,

\_\_\_\_\_  
Name of person making statement

ANTONY SCAMMELL

\_\_\_\_\_  
Address of person making statement

41 MARLBOROUGH STREET, COLLEGE PARK, SOUTH AUSTRALIA, 5069, AUSTRALIA

am the person signing the declaration on the above-identified application on behalf of the nonsigning inventor and make this statement as to the facts establishing my proprietary interest.

II. As of the date I signed the declaration for this application, the proprietary interest in this invention:

*(check one)*

- ☐ belonged to me.  
☒ belonged to the following juristic person:

NORTHFIELD LABORATORIES PTY LTD

\_\_\_\_\_  
Name of company or other juristic person

180 FOSTERS ROAD, OAKDEN, SOUTH AUSTRALIA, 5086, AUSTRALIA

\_\_\_\_\_  
Address of company or other juristic person

22 of 25 *Ref*

and I am authorized to sign the statement on behalf of the juristic person, my title being

GENERAL MANAGER OF NORTHFIELD LABORATORIES

*NOTE: A person with sufficient proprietary interest may authorize any person, including an attorney or agent registered to practice before the PTO, to sign the application papers on its behalf. Where this happens proof of this authority in the form of a statement signed by an appropriate official of the corporation or juristic person must be submitted. M.P.E.P. section 409.03(b), 7th ed.*

*NOTE: An inventor may not authorize another individual to act as his agent to sign the declaration papers although he or she can authorize the filing of the application if he or she later makes the declaration. 37 C.F.R. section 1.41(c) and M.P.E.P. section 409.03(b), 7th ed.*

III. A. I establish the proprietary interest by

*(check and complete (d) or (e))*

*NOTE: Documents that are not in the English language should be accompanied by an English translation. M.P.E.P. section 409.03(f), 7th ed.*

- (d) ☐ attaching a copy of the assignment of this invention by the omitted inventor.  
(e) ☒ attaching a copy of the agreement whereby the nonsigning inventor agreed to assign this invention.

*NOTE: A typical agreement to assign includes the employment agreement whereby the nonsigning inventor agreed to assign all his inventions to his or her employer. If an agreement to assign is dependent on certain specified conditions being met, it must be established in this statement that those conditions have been met. M.P.E.P. section 409.03(f), 7th ed.*

OR

- B. ☐ Although there is no assignment or written agreement to assign, a sufficient proprietary interest is demonstrated by the attached legal memorandum establishing that a court of competent jurisdiction would, by the weight of authority in that jurisdiction, award title in the invention to me or the legal entity on whose behalf I have authority to sign.

*NOTE: There should be filed a STATEMENT BY PERSON HAVING FIRST HAND KNOWLEDGE THAT NONSIGNING INVENTOR WAS EMPLOYEE OR OTHERWISE OBLIGATED TO PERSON WITH SUFFICIENT PROPRIETARY INTEREST WHEN INVENTION MADE.*

*NOTE: If the assignment being submitted is to be recorded, it should be submitted with an ASSIGNMENT (DOCUMENT) COVER SHEET or Form PTO 1595.*

IV. ASSIGNEE'S STATEMENT

In accordance with 37 C.F.R. section 3.73, the assignee hereby states that the evidentiary documents with respect to its ownership have been reviewed and that, to the best of assignee's knowledge and belief, title is in the assignee seeking to take this action.

23 of 25 Aug



V. PROOF OF NEED TO PREVENT IRREPARABLE DAMAGE OR PRESERVE THE RIGHTS OF THE PARTIES

*NOTE: This proof must be presented where the declaration is signed by a person with sufficient proprietary interest for the nonsigning inventor (37 C.F.R. section 1.47(b)).*

*Irreparable damage may be established by showing that a filing date is necessary to (1) avoid a statutory bar that should identify the act or publication believed to constitute the bar or (2) make a claim for priority, which should identify the prior application(s) involved. M.P.E.P. section 409.03(g), 7th ed.*

*A diligent effort to prepare the application and obtain the inventor's signature thereon must be made, even if the application is being filed to avoid a bar or to claim priority. M.P.E.P. section 409.03(g), 7th ed.*

*Preservation of the rights of the parties may be demonstrated by a showing that the nonsigning inventor may reasonably be expected to enter into competition with the person having a proprietary interest and signing on behalf of the nonsigning inventor or that a firm plan for commercialization of the subject matter of the application has been adopted. MPEP section 409.03(g), 7th ed.*

*NOTE: This section maybe nonsigning if it is completed in the Statement of Facts in Support of Filing on Behalf of nonsigning Inventor.*

*(use Supplemental Page(s) if necessary)*

24 of 25 *huf*



Date: 25<sup>th</sup> June, 2001

Signature of person making statement

[ ] Plus \_\_\_\_\_ Added Page(s)

before me:

GREG J BARTLETT  
45 GRENFELL STREET, ADELAIDE  
A PERSON REGISTERED AS A  
PATENT ATTORNEY UNDER  
CHAPTER 30 OF THE PATENTS  
ACT 1990 OF COMMONWEALTH  
OF AUSTRALIA

(Statement of Facts in Support of Filing on Behalf of Nonsigning Inventor—page 25 of 8) 1-6

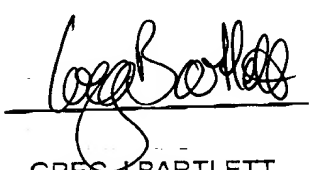
25 Ref

IN THE MATTER OF United  
States Patent Application  
09/702,037 in the name of  
**NORTHFIELD LABORATORIES  
PTY LTD**

**EXHIBIT NOTE**

This is the Exhibit marked "AS-1" produced and shown to Antony Scammell  
at the time of signing his declaration, this 25<sup>th</sup> day of June 2001.

Before Me:

  
GREG J BARTLETT  
45 GRENFELL STREET, ADELAIDE  
A PERSON REGISTERED AS A  
PATENT ATTORNEY UNDER  
CHAPTER 30 OF THE PATENTS  
ACT 1990 OF COMMONWEALTH  
OF AUSTRALIA

22/06 '01 FRI 16:39 FAX 61 8 82660722

NORTHFIELD LABORATORIES --- PHILLIPS ORMOND 003



19 December, 1996

**Peter B-D Whyte**  
 Field Manager  
 NorthField Laboratories  
 180 Fosters Road  
 Oakden, SA 5086.

Dear Peter,

In accordance with our previous discussions and correspondence, I am glad to offer you the new position of **Projects Manager** with NorthField Laboratories Pty Ltd, reporting to the General Manager.

**Job specification**

Your Job Role Statement is attached.

**Date of Commencement**

The position commences as of January 1st, 1997.

**Hours of work**

The ordinary working week will be 37.5 hours per week worked each day (Mondays to Fridays inclusive) between the hours of 8.00am and 6.00pm. Out of hours work will be required for this position. Overtime payment is not applicable to the position.

**Superannuation**

The Company will pay the prescribed superannuation guarantee levy, and salary sacrificing arrangements are available to you for additional contributions to superannuation according to the legislation. Both the SGL and salary sacrifice superannuation amounts may be paid into an approved superannuation fund of your choice.

**Salary**

The base salary for this position is \$70,000 per annum. The total salary package is detailed below. Included in the package is the value (including fringe benefits tax) of a fully maintained company car (policy HR-37-95 applies), and the government superannuation levy. Your salary is payable fortnightly into a bank account of your choice.

The total remuneration package for your position is:

	\$ 70,000
Base Salary (payable monthly)	
Superannuation Guarantee Levy (6%)	\$4,200
Annual Leave Loading	430
Nominal (approximate) company car expense (incl. FBT)	19,200
Total Package Cost	\$ 93,830

The Company reviews salaries annually.

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 staff\pwjobrol.doc

Northfield Laboratories Pty. Ltd. A.C.N. 064 854 244  
 180 Fosters Road, Oakden, South Australia 5086  
 Phone +61 (8) 266 2266 Fax +61 (8) 266 0722

Page 1 of 7

22/06 '01 FRI 18:39 FAX 61 8 82660722

NORTHFIELD LABORATORIES --- PHILLIPS ORMOND

@004

*Leave*

Other conditions of employment and entitlements include four weeks annual leave with leave loading. Annual leave entitlements are to be taken within six months of the end of the year in which they are accrued unless otherwise approved. Any outstanding leave due to you from the public service up to 31/12/94 will be paid to you as a cash equivalent by SARDI. You receive the standard Northfield allocation from 1/1/95.

For all accrued Long Service Leave (LSL) up to 31/12/94 SARDI will make a cash settlement directly to you. From 1/1/95 to 31/12/96, Northfield has accrued LSL in order to fund our obligation should you have returned to government. Your entitlement to pro rata LSL with Northfield begins 1/1/2002. At that time you will be credited with 8 extra days LSL, being the difference between the government rate and the standard rate for the past two years. From 1/1/97 LSL will accrue in accordance with State legislation applicable at the time, currently being thirteen weeks after ten years of service, with pro rata entitlements after seven years (63 calendar days).

You will commence with two years accrued sick leave (at twelve days sick leave per annum, less any taken since 1/1/95).

*Termination*

In the event of terminating your appointment, one month's written notice by either you or the Company shall be sufficient notification, subject to any statutory obligations in existence at the time.

*Confidentiality clause*

This offer of employment is made on the basis that you will not reveal secret and confidential Company information to outside parties, and that you will enter into the Company's standard secrecy agreement with regard to confidential information if asked.

*Company policies and procedures*

You will be expected to adhere to Company policy and procedures which are available for inspection.

*Acceptance*

A separate copy of this letter is enclosed and I would be grateful if you could sign it by December 20th as acceptance of this offer and acknowledgment of the conditions of appointment and job role.

On behalf of Northfield and Nutricia, I trust that your future with the Company in this new role will be most challenging, rewarding and enjoyable, and that we achieve all the promise that has held us to this venture for so long.

Yours sincerely,



Tony Scammell  
General Manager

I accept the offer of employment with Northfield Laboratories Pty Limited and hereby acknowledge and agree to the conditions of employment described above and in the job role statement

Signed: .....

Peter B-D Whyte

Date: .....

23/12/96

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staff\pwjobrol.doc

Page 2 of 7

IN THE MATTER OF United  
States Patent Application  
09/702,037 in the name of  
NORTHFIELD LABORATORIES  
PTY LTD

EXHIBIT NOTE

This is the Exhibit marked "AS-2" produced and shown to Antony Scammell  
at the time of signing his declaration, this 25<sup>th</sup> day of June 2001.

Before Me: 

GREG J BARTLETT  
45 GRENFELL STREET, ADELAIDE  
A PERSON REGISTERED AS A  
PATENT ATTORNEY UNDER  
CHAPTER 30 OF THE PATENTS  
ACT 1990 OF COMMONWEALTH  
OF AUSTRALIA

22/06 '01 FRI 18:39 FAX 61 8 82860722

NORTHFIELD LABORATORIES ↔ PHILLIPS ORMOND

005

Date

1/4

Year 1997

**EMPLOYEE CONFIDENTIALITY AGREEMENT**

between

**Northfield Laboratories Pty Ltd**.....  
(*the Employer*)

and

**Peter White**.....  
(*the Employee*)

22/06 '01 FRI 18:41 FAX 61 8 82660722

NORTHFIELD LABORATORIES →→→ PHILLIPS ORMOND 006

**CONTENTS**

1. DEFINITIONS
2. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION
3. SECURITY AND CONTROL
4. COPYING
5. ACKNOWLEDGMENT AND INDEMNITY
6. DISCRETION
7. INTELLECTUAL PROPERTY RIGHTS
8. EXCLUSIONS
9. TERMINATION
10. CONTINUING OBLIGATIONS
11. DUTY OF FIDELITY
12. WAIVER
13. SEVERABILITY



22/06 '01 FRI 18:41 FAX 81 8 82860722

NORTHFIELD LABORATORIES →→→ PHILLIPS ORMOND

007

**EMPLOYEE CONFIDENTIALITY AGREEMENT**

AGREEMENT dated ..... 11/4 ..... 1997

BETWEEN

NorthField Laboratories Pty Ltd A. C. N. 064 854 244

AND

Peter Whyte

**RECITALS**

- A. The Employer is in the business of Research, Development, Production and Marketing of colostrum products, both pharmaceutical and food.
- B. The Employee has agreed to keep confidential the information disclosed by the Employer.
- C. The Employer has agreed to disclose information to the Employee on the terms of this Agreement.

**AGREEMENT****1. DEFINITIONS**

In this Agreement:

**"Confidential Information"** means the following, whether or not in material form:

- (a) all confidential information (including but not limited to, trade secrets and confidential know-how) of which the Employee becomes aware or generates (both before and after the day this Agreement is signed) in the course of and by reason of employment with the Employer.;
- (b) all notes and other records prepared by the Employee based on or incorporating the information referred to in clause 1(a); and
- (c) all copies of the information, notes and other records referred to in either of clauses 1(a) and 1(b).

**2. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION**

- 2.1 In consideration of the Employer disclosing Confidential Information to the Employee [and training the Employee,] the Employee agrees:

- (a) to use Confidential Information solely in connection with the Employee's duties;

22/06 '01 FRI 18:41 FAX 61 8 82660722

NORTHFIELD LABORATORIES PHILLIPS ORMOND @008

(b) to keep confidential all Confidential Information (subject to disclosure permitted under clause 2.2); and

(c) otherwise to comply with the terms of this Agreement.

2.2 The Employee may disclose Confidential Information only to other employees of the Employer who:

(a) have a need to know (and only to the extent that each has a need to know);

(b) are aware that Confidential Information must be kept confidential; and

(c) have agreed in writing with the Employer to keep confidential Confidential Information.

### 3. SECURITY AND CONTROL

3.1 The Employee must:

(a) comply with any security measures established by the Employer from time to time to safeguard Confidential Information from access or use not authorised by the Employer;

(b) keep Confidential Information under the Employer's control;

(c) not remove Confidential Information from the Employer's premises; and

(d) immediately notify the Employer of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.

3.2 The Employee must provide assistance reasonably requested by the Employer in relation to any proceedings the Employer may take against any person for unauthorised use, copying or disclosure of Confidential Information.

### 4. COPYING

5. The Employee must not copy any Confidential Information without the Employer's written consent.

6. All copies of Confidential Information made by the Employee must be marked 'Confidential'.

### 5. ACKNOWLEDGMENT AND INDEMNITY

5.1 The Employee acknowledges that [she/he] is aware that any breach of this Agreement will result in the Employer suffering damage.

5.2 The Employee indemnifies the Employer against all losses, damages, expenses and legal costs (on a solicitor and own client basis and whether incurred by or awarded against the Employer) that the Employer may reasonably sustain or incur as a result, whether directly or indirectly, of any breach by the Employee of this Agreement.

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NORTHFIELD LABORATORIES →→ PHILLIPS ORMOND 009

**6. DISCRETION**

The parties acknowledge that the Employer is not obliged to disclose any information, including but not limited to, Confidential Information, to the Employee.

**7. INTELLECTUAL PROPERTY RIGHTS**

The parties acknowledge that this Agreement does not transfer any interest in any property, including but not limited to, any intellectual property rights.

**8. EXCLUSIONS**

The obligations of confidentiality under this Agreement do not extend to information that:

- (a) was already public knowledge when this Agreement was signed or becomes so at a future date (otherwise than as a result of a breach of this Agreement); or
- (b) the Employee is required by law to disclose.

**9. TERMINATION**

- 9.1 This Agreement will terminate immediately if the Employee's employment with the Employer terminates.
- 9.2 The Employer may terminate this Agreement at any time with immediate effect by giving written notice to the Employee.
- 9.3 On termination of this Agreement the Employee must immediately return to the Employer all Confidential Information in the Employee's possession or control.
- 9.4 Termination of this Agreement does not affect any accrued rights or remedies the Employer may have.

**10. CONTINUING OBLIGATIONS**

10.1 The Employee's obligations of confidentiality owed to the Employer continue after termination of this Agreement, except in respect of information that is part of the Employee's stock of general skill and knowledge.

10.2 At any time after termination of this Agreement the Employee must not:

- (a) record any Confidential Information into any form (including but not limited to, machine readable form); or
- (b) sell or otherwise transfer any Confidential Information.

**11. DUTY OF FIDELITY**

Nothing in this Agreement will be construed to limit the Employee's duty of fidelity to the Employer.

**12. WAIVER**

The failure of the Employer at any time to insist on performance of any provision of this Agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this Agreement.

**13. SEVERABILITY**

The whole or any part of any clause of this Agreement that is illegal or unenforceable will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

**EXECUTED** as an agreement.

SIGNED for and on behalf of the  
Employer by an authorised officer in  
the presence of

*P. D. Marshall*

Signature of Witness

*P. A. MARSHALL*

Name of Witness (Print)

*Technical & Operations Dept*

Office held

)  
) *A. W. Scammell*  
)  
) Signature of Officer

A. W. Scammell  
Name of Officer (Print)

General Manager  
Office held

SIGNED by the Employee in the  
presence of

)  
) *P. B. D. Whyte*  
)  
) Signature of Employee

Signature of Witness

Name of Witness (Print)

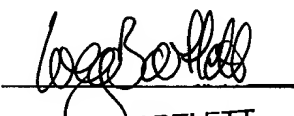
Office held

IN THE MATTER OF United  
States Patent Application  
09/702,037 in the name of  
NORTHFIELD LABORATORIES  
PTY LTD

EXHIBIT NOTE

This is the Exhibit marked "AS-3" produced and shown to Antony Scammell  
at the time of signing his declaration, this 25<sup>th</sup> day of June 2001.

Before Me:

  
GREG J BARTLETT  
45 GRENFELL STREET, ADELAIDE  
A PERSON REGISTERED AS A  
PATENT ATTORNEY UNDER  
CHAPTER 30 OF THE PATENTS  
ACT 1990 OF COMMONWEALTH  
OF AUSTRALIA

22/06 '01 FRI 18:42 FAX 61 8 82660722

NORTHFIELD LABORATORIES →→→ PHILLIPS ORMOND

011

**STANDARD OPERATING PROCEDURE****NORTHFIELD LABORATORIES**

<b>Department:</b> HUMAN RESOURCES	<b>Written By:</b> A. Scammell	<b>Index No:</b> HR-1-95
<b>Title:</b> RECRUITMENT OF STAFF, PROMOTION AND CONDITIONS OF EMPLOYMENT	<b>Checked By:</b>	<b>Page:</b> 4 of 9
	<b>Approved By:</b> C. D. Miller	<b>Issue Date:</b> 1/9/95
<b>Reason for Revision:</b>	<b>Previous Issue Date:</b> N/A	<b>Review Date:</b>
<i>Copies may only be taken from the Master Document. This document must be reviewed and reissued at the Review Date.</i>	<b>This copy issued to:</b>	<b>Copy check:</b>

The Employment Declaration Form will need to be filled out by new employees in conjunction with the Accountant.

Completion of the Induction Checklist which incorporates discussion about Company policies, procedures and expectations is necessary. An attachment provides information about the minimum statement covering these areas. Sections may wish to expand on this to meet particular needs.

### **8. ENGAGEMENT LETTERS**

Engagement letters to be issued to all award, supervisory/specialist, managerial and executive staff will be arranged by the Central Administration Section, after relevant discussion with appropriate line managers.

Whilst it may be appropriate on occasions to provide a personal touch in writing engagement letters with particular reference to the responsibilities of the position, special conditions and words of welcome, the following necessary elements of the terms of appointment must be contained within the letter. In particular, the following points are essential.

- (a) Commencement date.
- (b) Position title and to whom the person reports.
- (c) Base salary and arrangements for future salary reviews.
- (d) Other remuneration components, if any.
- (e) Superannuation arrangements.
- (f) Entitlements to leave (annual & long service leave).
- (g) Period of notice required to terminate contract of employment.
- (h) Information relating to secrecy agreements.
- (i) Provision for employee to sign the letter as their acceptance of the conditions offered.

### **9. CONFIDENTIALITY AGREEMENTS**

The very nature of the operations of Northfield means that staff at all levels either do, or have the potential to, become involved in or aware of information, processes, techniques and planning which is confidential to the Company.

**STANDARD OPERATING PROCEDURE****NORTHFIELD LABORATORIES**

<b>Department:</b>	<b>HUMAN RESOURCES</b>	<b>Written By:</b> A. Scammell	<b>Index No:</b> HR-1-95
<b>Title:</b>	<b>RECRUITMENT OF STAFF, PROMOTION AND CONDITIONS OF EMPLOYMENT</b>	<b>Checked By:</b>	<b>Page:</b> 5 of 9
<b>Reason for Revision:</b>		<b>Approved By:</b> C. D. Miller	<b>Issue Date:</b> 1/9/95
		<b>Previous Issue Date:</b> N/A	<b>Review Date:</b>
<i>Copies may only be taken from the Master Document. This document must be reviewed and reissued at the Review Date.</i>		<b>This copy issued to:</b>	<b>Copy check:</b>

Trade secrets, strategic marketing plans and activities, specialised production techniques, research and development activities and so forth are all valuable property of the Company and their confidentiality essential to the competitive position of Northfield and other Nutricia Companies and clients.

For this reason our Application for Employment Form and all letters of engagement now includes an undertaking that the employee will not reveal secret and confidential information to outside parties and that if requested, he/she will sign a full secrecy agreement.

This clause must be pointed out to applicants being offered employment and the Job Application Form must be signed by all persons before any job is offered or appointment made.

The only exception is where an equivalent undertaking concerning secrecy agreements has been obtained from the applicant by separate documents.

All letters offering/confirming employment must contain, as part of the conditions of job offer, an agreement or stipulation that the employee will enter into a secrecy agreement.

The standard employee confidentiality agreement is available on request.

## **10. INDUCTION OF STAFF**

The main objective of induction and orientation is to obtain the best possible performance from the new employee in the least amount of time, therefore integrating the new employee into the Company with minimum disruption and maximum efficiency.

Once staff have been appointed, it is important that they receive a proper and appropriate induction to the Company, the department in which they will be working and their particular job.

In order to enhance this process, a Standard Induction Checklist has been formulated for use in conjunction with the Job Appointment Form. The checklist comprises four main sections:

- Company Information;
- Company Policies, Procedures and Conditions of Employment;
- Health and Safety;
- Facilities and Benefits.

IN THE MATTER OF United  
States Patent Application  
09/702,037 in the name of  
NORTHFIELD LABORATORIES  
PTY LTD

EXHIBIT NOTE

This is the Exhibit marked "AS-4" produced and shown to Antony Scammell  
at the time of signing his declaration, this 25<sup>th</sup> day of June 2001.

Before Me: 

GREG J BARTLETT  
45 GRENFELL STREET, ADELAIDE  
A PERSON REGISTERED AS A  
PATENT ATTORNEY UNDER  
CHAPTER 30 OF THE PATENTS  
ACT 1990 OF COMMONWEALTH  
OF AUSTRALIA



22/06 01 FRI 19:43 FAX 01 0 02000/22

NORTHFIELD LABORATORIES 433 PHILLIPS ORMOND 2013

# NorthField

## LABORATORIES

### Job Role Statement

Position: Project Manager Northfield Laboratories Pty Ltd

Reporting to: General Manager Northfield Laboratories Pty Ltd

Job Holder: Peter Bennett Dan Wray

Commencement Date: January 1st 1999

Type of appointment: Permanent full time

Agreed by:

Manager: *Tony Scammell* General Manager Northfield Laboratories Pty Ltd  
Name: Tony Scammell

Job Holder: *PB D Wray*

Date: *22/6/99*

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NORRISFIELD LABORATORIES PHILLIPS ORMONDE 014

**1.1 Job Role Purpose***(Briefly describe why the position exists)*

To co-ordinate and ensure completion of specific projects identified as having priority, but either:

- a) not falling under the direct supervision/responsibility of the Technical and Operations Manager or the pure R&D function, or
- b) requiring the expertise/assistance of the job holder.

**1.2 Main Functions of the job***(List outcomes that are most important when assessing the effectiveness of the position)*

Completion of specific projects with clear objectives and resource allocation agreed between the job holder and the management team. Examples of the type of projects could be:

- a) Veterinary product development: co-ordination/completion of a project to establish regular sales of colostrum to veterinary customers (product development, trial, customer relations, etc.)
- b) Dairy product development: co-ordination and completion of project to establish sales of INTACT colostrum to appropriate customers as foreshadowed by project "FRESH".
- c) Management of contracted animal research (e.g. Struan trials, IDDLO, SARDI).
- d) Field research activity for new products.

Input into broader company aims and objectives by participation in management team and scientific committee.

**1.3 Duties Tasks and Activities***(List the main activities required to achieve the Job role Purpose. Refer back to the list of main job function outcomes and group duties under each heading)*

Job Function	Priority	Duty/Activity	Time %
Project initiation and management			75%
Management and Scientific input			25%

**1.4 Location and Travel***(Where the job is performed, and any travel requirements)*

The job location is in Oakden, Adelaide. Intrastate, interstate and occasional overseas travel may be required.

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staff\pwjobrol.doc

**1.5 Decisions/Judgements/Initiatives***(Describe the major types of decisions the job holder would make on a day to day basis)*

Ways and means of achieving goals and objectives, including planning and managing allocation of human and capital resources within time and budget parameters.

**1.6 Authority Levels***(Describe the maximum levels of authority this position has.)***Financial**

- Purchase order approval limit for budgeted, non-capital items \$ 1,000

**1.7 Supervision***(Provide details of staff directly supervised)*

No. of staff (1997 budget): 0

Number and type of positions supervised:

<u>Position</u>	<u>No. of staff supervised</u>

**1.8 Training or mentoring staff (non-supervisory)***(Provide details of staff or positions that you have a responsibility to train or oversee their work without a direct supervisory responsibility)***1.9 Relationships - internal***(Detail other positions within the company that you work with to achieve your job functions outcomes.)*

Management and supervisory team. Project teams.

**1.10 Relationships - external***(Detail other persons or organisations that you work with to achieve your job function outcomes.)*

Project stakeholders, and others as appropriate:

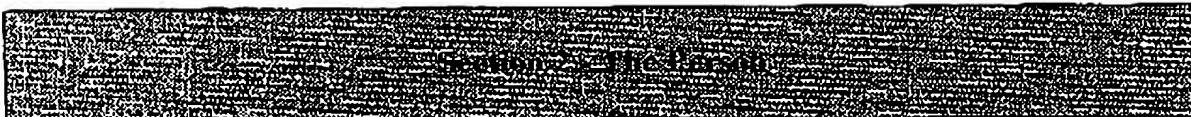
1. Research establishments, consultants and experts contracted by NorthField.
2. Non-Nutricia customers.
3. Nutricia units as appropriate.
4. Dairy industry liaison, as appropriate.

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NORTHFIELD LABORATORIES

PHILLIPS ORMONDE

010

**2.1 Main Competency/Skill Areas**

*(List the main competency or job skills that are required to perform the main job functions. Define the standards required for each. Mark each as either E - essential, or D - desirable.)*

1. Project Management skills, including:
  - 1.1. Communication skills: verbal, written, presentations, interpersonal E
  - 1.2. Negotiation skills E
  - 1.3. Organisation and documentation E
  - 1.4. Ability to motivate and encourage people E
  - 1.5. Ability to plan and prioritise E
  - 1.6. Computing literacy E
  - 1.7. Report writing E
  - 1.8. Budgeting and financial reporting skills E
2. Ability to grasp industry and company issues for strategy development E

**2.2 Specific knowledge**

*(Describe any industry or enterprise specific knowledge required for this job. Mark each as either E - essential or D - desirable.)*

Knowledge of:

1. Dairy industry
2. Nutritional/biotechnology/pharmaceutical industries
3. Veterinary/animal health industry
4. technical and commercial aspects of bovine colostrum

**2.3 Formal Education**

*(List any formal education and/or professional qualifications that are required for this job. Nominate these as E - essential or D - desirable.)*

Tertiary qualifications in:

1. Technical or Scientific discipline related to dairy and/or food and/or pharmaceutical industry D
2. Business Administration D
3. Post graduate degree in either or both of the above D

**2.4 Business or Work Experience**

*(List the business experience necessary for this position. Nominate these as E - essential or D - desirable.)*

1. Five to ten years experience in the dairy, pharmaceutical, nutritional or related industry D
2. Project Management Experience D

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**2.5 Personal Attributes**

*(Describe any personal attributes needed for success in this position)*

1. Good listening and communication skills, including presentation to various audiences in person, writing or by other media.
2. Leadership and interpersonal skills.
3. Ability to make and implement decisions, and to see opportunities for positive change.
4. Organisational skills.
5. Desire to achieve and document excellent results efficiently.

**2.6 Other Requirements**

*(Describe any other special requirements for this position, e.g. hours worked, meetings attended, etc.)*

1. After hours work required.
2. Travel required.

**3.1 Special Conditions**

*(Describe any conditions of employment or adjustments to the job role which may be related to the individual job holder, or of a temporary or unusual nature e.g. training, study leave, etc.)*

Mastercard available for travel expenses.

**3.2 Personal Skills**

*(Describe any special personal skills/attitudes the job holder has which may or may not be needed for this job, e.g. languages, overseas experience, etc.)*

Please note details on Curriculum vitae.  
Veterinary degree.

**3.3 Personal Contribution**

*(Describe any other areas of personal contribution the job holder makes to Northfield, i.e. functions in addition to the job role)*

The incumbent is a veterinarian and provides the required veterinary advice and supervision for the company's activities and obligations under legislation such as the prevention of cruelty to animals act, and any other internal or external requirements regarding animal health and ethics.

**3.4 Appointment and Remuneration**

*See attached letter.*

IN THE MATTER OF United  
States Patent Application  
09/702,037 in the name of  
**NORTHFIELD LABORATORIES  
PTY LTD**

EXHIBIT NOTE

This is the Exhibit marked "AS-5" produced and shown to Antony Scammell  
at the time of signing his declaration, this 25<sup>th</sup> day of June 2001.

Before Me:



GREG J BARTLETT  
45 GRENFELL STREET, ADELAIDE  
A PERSON REGISTERED AS A  
PATENT ATTORNEY UNDER  
CHAPTER 30 OF THE PATENTS  
ACT 1990 OF COMMONWEALTH  
OF AUSTRALIA

22/06 '01 FRI 18:57 FAX 61 8 82660722

NORTHFIELD LABORATORIES --- PHILLIPS ORMOND

002

# NorthField

LABORATORIES

PERSONAL AND CONFIDENTIAL

**COPY**

31 December 1999

Peter B-D Whyte  
9A Australia II Avenue  
North Haven,  
South Australia.

Dear Peter,

**Re: Redundancy notice****Background**

As advised to all staff over the past weeks, NorthField's net management result for 2000 must not exceed a loss of \$1.1 million. To meet this objective in the face of reduced income during 2000, NorthField's budget assumptions for next year provide for a reduction in personnel costs, as well as other reductions in expenditure.

To achieve these savings, it is necessary to reduce NorthField's staffing levels. The company has developed a package of redundancy entitlements after consultation with government, industry and legal advisers which has been accepted by Royal Numico BV.

**Projects Manager**

As discussed with you, as part of the savings it has been decided to make the full time position of Projects Manager redundant. As discussed, there is currently no other position within the Company that is vacant or suitable. Unfortunately, as a result, your employment with NorthField will be terminated.

**Entitlements****Notice Period**

Your employment contract and the relevant award states that one month's notice will be sufficient, however, NorthField is providing 3 months notice from today, December 31st, making the effective date of termination Friday March 31st, 2000. As discussed with you, the notice period need not be worked out.

**Payment for years of service**

NorthField will pay three (3) weeks pay for each year of service (calculated to the nearest completed week).

Northfield Laboratories Pty Ltd ACN 064 854 244

180 Fosters Road, Oakden, South Australia 5086 Phone: +61 (8) 8266 2266 Fax: +61 (8) 8266 0722  
Email: northfield@northfieldlabs.com.au http://www.northfieldlabs.com.au  
Goratory: 6th Floor, 21 Diver Place, Adelaide, South Australia 5000 Phone: +61 (8) 8226 7701  
Fax: +61 (8) 8226 7747 Email: nfield@northfieldlabs.com.au

Page 1 of 2

22/06 '01 FRI 18:58 FAX 61 8 82660722

NORTHFIELD LABORATORIES +--+ PHILLIPS ORMOND 003

The redundancy entitlements will be paid at the time you physically cease working at NorthField. Your financial entitlements are listed below.

**Confidentiality**

The company's confidentiality agreement stipulates that company information must be kept confidential even after termination of employment with the Company.

**Farewell**

I have enjoyed working with you at NorthField. You will be missed by myself, the Company and those with whom you have had contact on NorthField's behalf over the years. Naturally, I very much regret having to make this decision, and sincerely hope that it will in fact lead to the best for you in the future.

Yours sincerely,

  
Tony Seammell  
General Manager

cc: JAW

**Financial entitlements**

Years service	5	
Weekly pay rate	\$ 1,715	
13 weeks notice period	\$ 22,300	
Redundancy payment for years of service	\$ 25,731	
Annual leave accrual net of tax (to 31/3/00)	\$ 1,948	(15 weeks)
Total payment on termination	<u>\$ 49,979</u>	
Amount already received	<u>\$ 18,641</u>	
Residual to be rolled over into superannuation fund	\$ 31,339	
Tax free component	\$ 4858 + 5(\$2,429)	\$ 17,003

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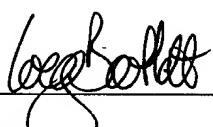


IN THE MATTER OF United  
States Patent Application  
09/702,037 in the name of  
**NORTHFIELD LABORATORIES  
PTY LTD**

**EXHIBIT NOTE**

This is the Exhibit marked "AS-6" produced and shown to Antony Scammell  
at the time of signing his declaration, this 25<sup>th</sup> day of June 2001.

Before Me: \_\_\_\_\_

  
GREG J. BARTLETT  
45 GRENFELL STREET, ADELAIDE  
A PERSON REGISTERED AS A  
PATENT ATTORNEY UNDER  
CHAPTER 30 OF THE PATENTS  
ACT 1990 OF COMMONWEALTH  
OF AUSTRALIA

**20****MONDAY**  
325/041 Week 47

7:00

Compressor had blown 2 fuses. 32 amp.  
fixed - lost all or decreased water, so did  
regen.

8:00

revised BBQ after borrowed for Sat day.

9:00

Went to florist to pick up columbin powder out of  
shed and replace what was in the shed.  
also dropped off documentation from Ray for Pete  
to sign. He said he wouldn't sign & suggested  
he read it and then call Tony.

10:00

11:00

Tony wrote a clear legend columbin proteins,  
need to look at

12:00

Asked Pam to talk with Mark, he will think  
about it but if Mark is working in the laboratory  
he reports to Ivan.

1:00

2:00

3:00

Raymond Peter's Diary.

4:00

5:00

6:00

7:00

**January**

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

**February**

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29						

**March**

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

**April**

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

**May**

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

**June**

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

IN THE MATTER OF United  
States Patent Application  
09/702,037 in the name of  
NORTHFIELD LABORATORIES  
PTY LTD

EXHIBIT NOTE

This is the Exhibit marked "AS-7" produced and shown to Antony Scammell  
at the time of signing his declaration, this 25<sup>th</sup> day of June 2001.

Before Me:



GREG J BARTLETT  
45 GRENFELL STREET, ADELAIDE  
A PERSON REGISTERED AS A  
PATENT ATTORNEY UNDER  
CHAPTER 30 OF THE PATENTS  
ACT 1990 OF COMMONWEALTH  
OF AUSTRALIA

DRAFT



DATED: .....

YEAR: .....

## CONSULTANCY AGREEMENT

BETWEEN:

**NorthField Laboratories Pty Ltd**  
**ACN 064 854 244**

("NorthField")

AND:

**Dr Peter Whyte**

("Consultant")

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1. INTERPRETATION
2. DEFINITIONS
3. ENGAGEMENT OF CONSULTANT
4. OBLIGATIONS OF NORTHFIELD
5. REPORTING AND RECORDS
6. PAYMENT
7. ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS
8. CONFIDENTIAL INFORMATION
9. RELATIONSHIP
10. BENEFITS
11. INSURANCE
12. COSTS, TAXES, LEVIES AND OUTGOINGS
13. SUMMARY TERMINATION
14. TERMINATION ON NOTICE
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17. INDEMNITY
18. FURTHER ACTION
19. SUB CONSULTANTS
20. CONTINUING OBLIGATIONS
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23. WAIVER
24. GOVERNING LAW AND JURISDICTION
25. ENTIRE AGREEMENT

**Additions****SCHEDULE 1 - INFORMATION SPECIFICALLY DESIGNATED AS CONFIDENTIAL****SCHEDULE 2 - CONSULTANT DETAILS****SCHEDULE 3 - INVOICE REQUIREMENTS**

**CONSULTANCY AGREEMENT***originally April 1<sup>st</sup>, 2000***AGREEMENT** dated ~~December~~ 1<sup>st</sup>**YEAR** ~~2001~~**BETWEEN****NORTHFIELD LABORATORIES PTY LTD** ACN 064 854 244 of 180  
Fosters Road, OAKDEN, South Australia, 5086 ("NorthField")**AND****Dr Peter Bennett-Duff Whyte**, 9A Australia II Avenue, North Haven, South  
Australia, 5108 ("Consultant")**RECITALS**

NorthField has agreed to accept the Consultant's offer to provide the Services upon the terms and conditions contained in this Agreement.

**AGREEMENT****1. INTERPRETATION**

In this Agreement unless the context otherwise requires:

- i. words importing the singular number include the plural number and vice versa;
- ii. reference to a person includes the executors, administrators, successors and assigns of that person and includes corporations and associations;
- iii. where any party comprises more than one person then the liability of those persons under this Agreement is both joint and several;
- iv. headings are for ease of reference only and do not affect the construction of this Agreement; and
- v. the Recitals form part of this Agreement.

**2. DEFINITIONS**

For the purposes of this Agreement:

"Confidential Information" means the following, whether or not in material form:

- (a) all confidential information (including, but not limited to trade secrets, confidential know-how and the confidential information listed in **Schedule 1**) relating to NorthField or a Related Body Corporate of NorthField from time to time; and

- (b) all other confidential information and know-how of which the Consultant becomes aware (both before and after the day this Agreement is signed) or which the Consultant generates in the course of, or in connection with provision of the Services.

**"Date of Commencement"** as detailed in schedule 2.

**"Documentation"** means all documentation prepared by the Consultant or any Key Employees for use by NorthField, including but not limited to the source code and all other information, software and documentation necessary to enable NorthField to maintain Software;

**"Intellectual Property Rights"** means all intellectual property rights, including but not limited to:

- (a) patents, copyright, electronic layout rights, registered designs, trademarks and any right to have confidential information kept confidential; and
- (b) any application or rights to apply for any of the rights referred to in paragraph (a).

**"Materials"** means all inventions, developments, software, models, drawings and other written materials created or prepared during the term of this agreement by the Consultant or any Key Employees (whether alone or jointly with NorthField or its personnel) for use by NorthField, including but not limited to Software and Documentation;

**"Related Body Corporate"** has the meaning given to that expression by sections 9 and 50 of the Corporations Law;

**"Sensitive Information"** means all information concerning or relating to this Agreement, its termination or the circumstances relating to its termination.

**"Services"** means the services to be provided to NorthField by the Consultant under this Agreement as described in Schedule 2;

**"Software"** means the object and source code for each part or whole software module created by the Consultant for NorthField;

**"Term of this Agreement"** means the period commencing on the Date of Commencement up to the expiry date (item 5, schedule 2).

### 3. **ENGAGEMENT OF CONSULTANT**

- a. NorthField engages the Consultant to provide the Services for the Term of this Agreement.
- b. The Consultant must provide the Services to the best of the Consultant's abilities and knowledge
- c. In providing the Services the Consultant must:
- i. comply with any reasonable directions given by NorthField from time to time;

- ii. cooperate with any third parties involved in any project for which the Services are required by NorthField; and
  - iii. comply with all applicable standards, laws and regulations.
- d. The Consultant must comply with NorthField's usual staff and security practices while attending NorthField premises.

#### 4. **OBLIGATIONS OF NORTHFIELD**

NorthField must provide to the Consultant:

- i. facilities reasonably required by the Consultant to perform its obligations under this Agreement; and
- ii. information the Consultant reasonably requires so that the Consultant is not delayed in performing its obligations under this Agreement.

#### 5. **REPORTING AND RECORDS**

- a. If requested by NorthField, the Consultant must submit a report to NorthField which specifies (see item 6, Schedule 2):
- i. the tasks completed in providing the Services; and
  - ii. the number of hours spent by the Consultant in providing the Services.
- b. The Consultant must keep complete and accurate records, in a form acceptable to NorthField, of the number of hours spent in the provision of the services by the Consultant and produce those records to NorthField on request.

#### 6. **PAYMENT**

- a. The Consultant must submit to NorthField invoices in accordance with **Schedule 3**.
- b. NorthField must pay the Consultant in accordance with **Schedule 2**.

#### 7. **ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS**

- a. The Consultant assigns to NorthField all existing and future Intellectual Property Rights in Materials.
- b. The Consultant:
- i. acknowledges that no additional documentation is necessary to complete the assignment made under 7.1 and by virtue of that clause all existing Intellectual



Property Rights in Materials are vested in NorthField, and on their creation, all future Intellectual Property Rights in Materials will vest in NorthField;

- ii. must do all things reasonably requested by NorthField to enable NorthField to assure further the Intellectual Property Rights assigned under clause 7.1.
- c. The Consultant warrants that to the best of his/her knowledge, the Materials and their use by NorthField will not infringe the Intellectual Property Rights of any person.

## 8. CONFIDENTIAL INFORMATION

- a. The Consultant must:
  - i. keep confidential the Confidential Information, in perpetuity
  - ii. use the Confidential Information solely for the purpose for providing the Services; and
  - iii. return the Confidential Information to NorthField immediately upon request.
- b. The Consultant must enforce at its expense the Confidentiality Agreements contemplated by paragraph 8.2(b).
- c. The Consultant:
  - i. must not transmit or permit the transmission by telecommunication (including facsimile) of Confidential Information without NorthField approval,
  - ii. must establish and maintain effective security measures to safeguard Confidential Information from access or use not authorised by this Agreement; and
  - iii. must notify NorthField immediately of any suspected or actual unauthorised use or disclosure of Confidential Information.
- d. The obligations of confidentiality under this Agreement do not extend to information that (whether before or after this Agreement is executed):
  - i. is public knowledge (otherwise than as a result of a breach of this Agreement); or
  - ii. is required by law to be disclosed.

## 9. RELATIONSHIP

- a. Nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, or partnership between NorthField and the Consultant.
- b. The Consultant acknowledges that this Agreement does not give the Consultant authority to bind NorthField.

- c. The Consultant must not directly or indirectly assume or create or attempt to assume or create any obligation on behalf of or in the name of NorthField.

10. **BENEFITS**

Except for the payments to be made to the Consultant pursuant to clause 6, as an independent contractor the Consultant has no entitlement to any other benefits, payments or allowances (including, but not limited to, annual leave, sick leave, long service leave or any other leave to which the Consultant might otherwise have been entitled if the Consultant was an employee and not an independent contractor) to the intent and with the effect that the benefits, payments and other allowances prescribed to the Consultant pursuant to this Agreement comprise the entirety of the Consultant's entitlements to the exclusion of all others.

11. **INSURANCE**

- a. The Consultant will provide and pay for any and all insurances which a reasonable and prudent person would consider to be appropriate in the conduct of a business the same as or similar to the Consultant's business in providing the Services, including (but not limited to) public liability and workers compensation insurance, and the Consultant agrees to indemnify NorthField against all or any claims or demands which may arise from the actions or omissions of the Consultant or the Consultant's employees agents delegates customers or invitees in the provision of the Services.
- b. The Consultant will on request provide NorthField with proof of appropriate insurances, including but not limited to:
- i. public liability insurance to a minimum as specified in item 9 of schedule 2; and
  - ii. appropriate workers compensation insurance as required from time to time by State law.

12. **COSTS, TAXES, LEVIES AND OUTGOINGS**

The Consultant will be responsible for and will indemnify NorthField against all costs, taxes, imposts, levies, payments and other outgoings and expenses (including, but not limited to income tax, PAYE tax, pay-roll tax, superannuation guarantee charge, training guarantee levy, WorkCover charges, annual and other leave payments and loadings) incurred in or in consequence of the performance by the Consultant of this Agreement, except for those expenses agreed as per item 8 of schedule 2.

13. **SUMMARY TERMINATION**

This Agreement may be terminated by NorthField summarily at any time by giving notice in writing to the Consultant if:

- i. the Consultant breaches any of the provisions of clause 8 (Confidential Information);
- ii. the Consultant breaches any other provision of this Agreement and fails to remedy the breach within 30 days after receiving written notice requiring it to do so;
- iii. any step is taken to enter into any arrangement between the Consultant and its creditors;
- iv. the Consultant ceases to be able to pay its debts as they become due;
- v. the Consultant ceases to carry on business; or
- vi. any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator or other like person of the whole or any part of the Consultant's assets or business.

#### 14. **TERMINATION ON NOTICE**

This Agreement may be terminated by either party at any time by giving to the other party one month's written notice.

#### 15. **AFTER TERMINATION OR COMPLETION**

- a. On termination of this Agreement or completion of the Services, the Consultant must deliver to NorthField all Materials in the Consultant's possession or control.
- b. The obligations of confidentiality under clause 8 (Confidential Information) continue to apply to the parties to this Agreement (in addition to any assignee) after termination, completion or assignment of this Agreement.
- c. Clauses 7.3 (Assignment of Intellectual Property Rights) and 17 (Indemnity) continue after termination or completion of this Agreement.
- d. Termination of this Agreement will not affect any accrued rights or remedies either party may have.

#### 16. **SENSITIVE INFORMATION**

The Consultant must not disclose, divulge, communicate to or otherwise place at the disposal of any third party, in any form or by any means, any Sensitive Information irrespective of whether or not that information is confidential in nature or in the public domain.

**17. INDEMNITY**

- a. The Consultant will indemnify NorthField for any liability, loss or claim arising under any statute or common law in respect of:

- i. loss or damage to personal property;
- ii. bodily injury to or death of any person;

where such loss, damage, injury or death arises out of or as a consequence of the performance of this Agreement.

- b. The Consultant agrees to the extent permitted by law that it will not have or make any claim against NorthField, its servants or agents for personal injury or for property loss or damage suffered by the Consultant, its servants or agents arising out of or as a consequence of the performance of this Agreement regardless of how the loss or injury occurs.

**18. FURTHER ACTION**

Each party must do or cause to be done all things necessary or desirable to give effect to, and refrain from doing things that would hinder performance of this Agreement.

**19. SUB CONSULTANTS**

The Consultant must not subcontract to any person the performance of any of its obligations under the Agreement without the written consent of NorthField

**20. CONTINUING OBLIGATIONS**

The termination of this Agreement for any reason whatsoever will not affect the operation of clauses 7, 8, 12, 16 and 17 which will remain in full force and effect irrespective of that termination.

**21. ASSIGNMENT**

The Consultant must not assign or attempt to assign or otherwise transfer any right arising out of this Agreement without:

- i. ensuring that the Assignee assumes all of the Consultant's obligations under this Agreement; and
- ii. obtaining the written consent of NorthField, which may not be unreasonably withheld.

**22. SEVERABILITY**

The whole or any part of any clause of this Agreement that is illegal or unenforceable will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

**23. WAIVER**

The failure of either party at any time to insist on performance of any provision of this Agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this Agreement.

**24. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the laws of the State of South Australia.

**25. ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding and agreement between the parties as to its subject matter.

**EXECUTED** as an agreement.

**SIGNED** for and on behalf of )  
**NORTHFIELD LABORATORIES** )  
**PTY LTD** by a duly authorised )  
officer in the presence of: )

.....  
Witness

.....  
Name of Party

**SIGNED** for and on behalf of )  
the **CONSULTANT** by a duly )  
authorised officer in the )  
presence of: )

.....  
Witness

.....  
Name of Party

## **SCHEDULE 1**

### **INFORMATION SPECIFICALLY DESIGNATED AS CONFIDENTIAL**

As per the contract definitions for Confidential and Sensitive, including but not limited to Company policies, results, data, decisions.

## SCHEDULE 2

Item 1 The Consultant

*Dr Peter Bennet-Duff Whyte*  
 9A Australia II Avenue, North Haven, S. A. 5108  
 ABN No: \_\_\_\_\_

Item 2 The Consultancy Service

The Consultant will endeavour to inform NorthField in a timely manner of news and events relevant to the Company's activities, particularly relating to the Consultants field of expertise. The retainer is in consideration for this service and for availability of the consultant to provide:

- *Veterinary and Technical advice to NorthField management, staff and Scientific Committee as required.*
- *Participation in either scientific committee and/or other planning or strategy meetings as required,*
- *Ad-hoc advice and work on veterinary and other research matters as required*
- *Input into product and project initiation and promotion as required.*

Item 3 The Consultant's Staff

N/A

Item 4 Commencement Date

January 1st, 2001

*originally April 1st 2000*Item 5 Expiry Date

December 31st, 2002

*originally Dec 31st 2001*Item 6 Reporting Dates

With invoices

Item 7 The Fee

Annual retainer = \$2,500.00

Hourly rate for consultancy = \$85.00

The Manner  
of Payment

\* Retainer payable in January each year

\* Cheque payable within 30 days of the end of a month in which invoice provided.

Item 8 Further Terms  
and Conditions

Nil

Item 9 Sum Insured

N/A

Item 10 The Location

The Consultant will conduct his/her work at home, NorthField,  
 Flaxley or other sites as necessary.



### **SCHEDULE 3**

### **INVOICE REQUIREMENTS**

The consultant must provide an ABN number and properly constructed "tax invoice".


The invoice will detail the Date, duration and description of work.

IN THE MATTER OF United  
States Patent Application  
09/702,037 in the name of  
NORTHFIELD LABORATORIES  
PTY LTD

EXHIBIT NOTE

This is the Exhibit marked "AS-8" produced and shown to Antony Scammell  
at the time of signing his declaration, this 25<sup>th</sup> day of June 2001.

Before Me:

  
GREG J BARTLETT  
45 GRENFELL STREET, ADELAIDE  
A PERSON REGISTERED AS A  
PATENT ATTORNEY UNDER  
CHAPTER 30 OF THE PATENTS  
ACT 1990 OF COMMONWEALTH  
OF AUSTRALIA

GNC Live Well

## intact® Colostrum

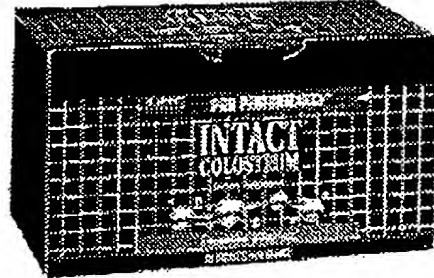
[Home](#)[The Natural Pharmacy](#)[GNC Difference](#)[GNC Gold Card Club](#)[Store Locator](#)

## REVOLUTIONIZE YOUR WORKOUT

## Pro Performance® intact® Colostrum

Intact® Colostrum is on the cutting edge of supplement research and could revolutionize your workout.

This great-tasting post-workout powder easily mixes with water or your favorite juice to deliver a superior form of protein. Known as one of nature's miracles, colostrum is produced by all mammals and its purpose is to pass the mother's antibodies (immunoglobulins) on to her offspring. Bovine colostrum is secreted by cows during the first few days after calving and is a rich source of bioactive components. Laboratory analysis of immune and growth factors in bovine colostrum show they are identical to those found in human colostrum, however research has shown that bovine colostrum has greater quantities of immune factors than that from humans.



## How is intact® Different?

Most colostrum products are manufactured using high heat treatments that can destroy colostrum's bioactive compounds. Only intact® uses a superior, patent-pending low-heat processing to preserve all of the nutrients and active ingredients. This specialized collection process produces a low fat, low lactose concentrated colostrum protein that has been uniquely studied for its role on athletic performance. Additionally, intact® is collected immediately after calving to ensure the highest concentration of fresh proteins, antibodies and growth factors. In fact, intact® contains a minimum of 15% of IgG (3 grams per serving). To maximize purity of ingredients, intact® is extracted from pasture-fed dairy cows raised free of pesticides, hormones and antibiotics.

## What is Colostrum's Role on Athletic Performance?

One preliminary controlled study involved scholarship rowers who completed a nine-week training program while consuming either 60g per day of intact® Colostrum or whey protein. In Figure 1 you'll notice that rowers consuming intact® Colostrum showed a 150% greater improvement in work done during Row1 after nine weeks. Also, in an 8-week controlled study, vertical jumping increased at least two-fold in men who consumed intact® Colostrum versus the whey protein supplemented group (Figure 2). Although the research is yet to be published and the results are not conclusive, these findings are quite intriguing. Additional studies are being conducted in the U.S. and at other research facilities worldwide to confirm and replicate these preliminary findings.



Figure 1: Increase in ROW 1 work done from week 0 to week 9 in SASI rowers (without 308 included). \*P=0.004 compared with Whey Protein Group.



Figure 2: Increase in vertical jump height (cm). Significantly different compared with Whey Protein Group. \*P=0.006

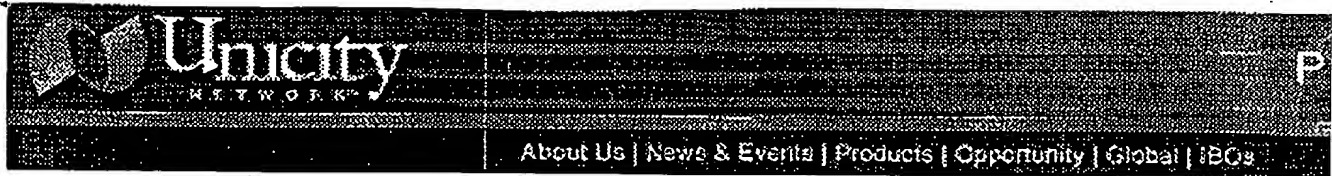
## How Does It Work?

Intact® is a complex mixture of biologically active substances. Because it has such a diverse composition, more research is needed to determine how it works and which components directly benefit athletes. However, a number of possible mechanisms are currently being researched. For example, colostrum provides high quality amino acids, which are needed for muscle protein synthesis and to maintain glutathione, an important antioxidant. In addition, bovine colostrum supplies insulin-like growth factor 1 or IGF 1.

**BUY PRODUCT**

Intact® is marketed under license from Northfield Laboratories Pty. Ltd., manufacturers of Intact®.  
Patents 639068, 644468. USA patents pending.

A



## Rexall Products

### Immunizen™ (180 capsules)

Helps support the Immune system

#### Listen Online

##### Product Info

by David

Mastroianni,

President

Length (5:25)



#### The human

Immune system

relies on cellular

organisms, such

as T-cells and

macrophages and

immunoregulatory chemicals, such as interferon, tumor

necrosis factor, and interleukin. Before doctors started

widely using pharmaceutical antibiotics in the 1930s and

1940s, physicians fought disease mainly with substances that stimulated the body's own defense organisms and chemicals. Many of these substances are effective today in strengthening the body's natural resistance.

To help support the immune system through supplementation, Immunizen contains colostrum, arabinogalactan, lactoferrin, and other ingredients that have a beneficial impact on the health and strength of the body's natural defenses.

Colostrum, which contains growth factors, antibodies, and inhibitors that support the immune system, is a powerful nutrient produced by mammals prior to milk.

A soluble fiber that is one of the most active compounds in echinacea and other medicinal herbs, arabinogalactan has been shown to block harmful substances from attaching and binding to cell membranes. This natural ingredient also enhances the number of immune cells present in the blood.

Lactoferrin is an immune-supporting protein that acts as an antioxidant and helps the body make better use of iron. Beta glucan is a large-chain sugar molecule that has been shown to stimulate macrophages, which are large molecules made from white bloods that are capable of consuming up to 100 invading organisms at a time.

#### What's

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